

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:14-00116

CHADWICK J. LUSK

SENTENCING MEMORANDUM

Comes now the United States of America, by Meredith George Thomas, Assistant United States Attorney for the Southern District of West Virginia, and files this Sentencing Memorandum.

**I. Defendant's Role in the Offense**

Defendant Lusk was prosecuted as part of an investigation focused on corporate fraud, kickbacks and bribery at Mountain Laurel Mining Complex ("Mountain Laurel"), owned by a subsidiary of Arch Coal, Inc.<sup>1</sup> Mr. Lusk is being sentenced for honest services mail fraud. Lusk was the purchasing manager at the Mountain Laurel Mining Complex, owned by a subsidiary of Arch Coal, Inc.<sup>2</sup> Stipulation of Facts at 1. A portion of his duties included ordering parts and products essential to the operation of Mountain Laurel. Id. CM Supply, Co., owned and operated by Gary Roeher, sold crib blocks,

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<sup>1</sup> Related cases include the prosecutions of Stephen Herndon, Scott Ellis, Alvis Porter, James Evans III, Ronald Barnette, David Herndon, Gary Roeher, David Runyon and Gary Griffith.

<sup>2</sup> While it is the United States understanding that Lusk was an employee of Mingo Logan Coal Company, he owed a fiduciary duty to Arch Coal, Inc., as the parent company of Mingo Logan.

which provide roof support in an underground mine, to Mountain Laurel. Id. Beginning sometime in 2009, until at least March 2014, Roeher paid Lusk a portion of the profit that CM supply received on the sale of crib blocks in exchange for Lusk directing the sales to him. See id. at 1-2. Generally, Roeher paid Lusk 7.5% of the crib block sales price after Roeher received payment from Arch. Id. at 2. Roeher estimates that he paid Lusk approximately \$230,000 between 2009 and March 2014. Id. at 2.

## **II. 18 U.S.C. § 3553(a) Argument**

A situation where an employee receives bribes from a person seeking to do business with the employee's company is more than just money changing hands between the payer and the recipient. Kickbacks given by vendors and received by an employee of a company, or in this case, its subsidiary, deprive the company of the honest services of those employees and place the company at the risk of economic harms. These potential economic harms include, but are not limited to, divided loyalties, wherein an employee is no longer solely interested in the well-being of his company, but has an interest in maintaining and protecting the ongoing relationship between the vendor and the company. Lusk participated in such a relationship with Gary Roeher, and the kickbacks that Lusk received kept Arch Coal from receiving Lusk's honest services. At the very least, instead of Lusk receiving \$230,000 into his pocket in exchange for the selection of CM Supply

as the crib block supplier, Arch Coal should have gotten a better price on the crib blocks from CM Supply.

This type of illegal activity was rampant at the Mountain Laurel Mining Complex, perpetuated by both employees and vendors. Moreover, not only the company whose employee takes kickbacks is put at risk of economic harm, but the honest vendors, who are unwilling to pay to play, never get a chance to participate. The United States respectfully requests that the Court take these factors into consideration at sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "SENTENCING MEMORANDUM" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing this 20th day of April, 2015, to:

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